

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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RANI H. SAMUEL,

Plaintiff,

-VS-

CITIBANK, N.A., LONG TERM  
DISABILITY PLAN, a/k/a Citigroup  
Long Term Disability Plan,

Defendant.

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CIV. 07-4051

OPINION AND ORDER RE:  
PLAINTIFF'S LETTER MOTION  
(DOC. 77)

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This Order is in response to plaintiff's letter of April 20, 2010, which is deemed to be a motion to permit discovery outside the administrative record ([Doc. 77](#)). Twice before motions to allow discovery outside the administrative record have been denied (Docs. [23](#) & [41](#)). Plaintiff refers to a decision by another judge in this district to support the letter motion. *Hackett v Standard Insurance Company*, Civ. 06-5040, ([Doc. 83](#)). *Hackett* has been reviewed. It is distinguishable from this case. In *Hackett*, the conflict of interest could be a tie breaker under *Glenn*. [Metropolitan Life Ins. Co. v. Glenn](#), — U.S. —, 128 S.Ct. 2343 (2008). *Glenn* was specifically considered and addressed in one of the earlier Orders denying discovery outside the administrative record:

After the Order disallowing discovery outside the administrative record was filed the United States Supreme Court decided a pertinent case. [Metropolitan Life Ins. Co. v. Glenn](#), — U.S. —, 128 S. Ct. 2343 (2008). The Supreme Court decided in *Glenn* that a plan administrator which both evaluates claims for benefits and pays benefit claims is operating under a conflict of interest. After *Glenn* the Eighth Circuit Court of Appeals observed that *Glenn* did not change the standard of review. [Wakkinen v. Unum Life Ins. Co. of America](#), 531 F. 3d 575, 581 (8<sup>th</sup> Cir. 2008). In a plan which gives the plan administrator discretion to evaluate and pay claims under the ERISA,

the administrator's conflict of interest is one of the factors to be considered. *Id.* The conflict of interest can be a tiebreaker where the other factors are closely balanced. *Id.* *Wakkinen* adhered to the principle that "[w]e examine only the evidence that was before the administrator when the decision was made, and we are to determine whether a reasonable person could have- not would have- reached a similar decision. *Wakkinen* at 583.

([Doc. 41](#)).

Previously in addressing one of plaintiff's motions to reconsider it was said:

In this case, however, the conflict of interest is not a tiebreaker to which the court needs to resort in the event of a tie. There is no tie.

([Doc. 62, p. 2](#)).

Nothing has changed about that circumstance. There still is no tie. It was not and is not necessary to resort to the conflict of interest as a tie breaker.

It is ORDERED that plaintiff's letter motion to reconsider and to allow discovery outside the administrative record ([Doc. 77](#)) is DENIED.

Dated April 22, 2010.

BY THE COURT:

s/John E. Simko

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John E. Simko  
United States Magistrate Judge